

**MINUTES OF A MEETING OF THE BOARD OF APPEALS
June 14, 2012**

Chairperson Harvey Kaye called the meeting to order at 7:30 p.m. Board Members present: Vice Chairperson Victor Macdonald, Board Members Robert Chiswell, Aaron Kotok, and Alternate Gene Wasserman. Absent: Board Member Carol Rieg. Staff present: Caroline Seiden, Planner and Kirk Eby, GIS Planner.

I. APPROVAL OF MINUTES

Approval of the May 10, 2012 Minutes

Motion was made by Board Member Chiswell, seconded by Board Member Kotok, that the minutes of the May 10, 2012 Board of Appeals meeting be approved, as amended.

Vote: 4-0-1; Approved (Abstain: Macdonald)

Approval of the May 31, 2012 Minutes

Motion was made by Vice Chair Macdonald, seconded by Board Member Kotok, that the minutes of the May 31, 2012 Board of Appeals meeting be approved.

Vote: 4-0; Approved

II. AMENDMENT TO SPECIAL EXCEPTION

A-504 (C) - Rick Shaub for Montrose Motors, Inc.

The application requests an amendment to Special Exception A-504(B) to permit an expansion of an automobile paint and body repair shop at 951 North Frederick Avenue (Maryland Route 355), located on Parcel A, Hargett's Addition to Gaithersburg in the AAMCO Service Building. The property is located in the C-2 (General Commercial) Zone in Gaithersburg, Maryland. The special exception is allowed by Section 24-118(5) of the City of Gaithersburg Zoning Ordinance (Chapter 24 of the City Code) subject to the review of the Board of Appeals.

Planner Seiden introduced the case, noting that there are currently 13 exhibits in the file. Chairperson Kaye swore in Mr. Rick Shaub, on behalf of Montrose Motors, who then gave a brief overview of his request to expand into additional space in the existing building. In response to a question from Chair Kaye, Mr. Shaub confirmed that he would not be selling cars at the facility.

There was no additional testimony, either in favor of, or in opposition to the amendment to the special exception.

Motion was made by Vice Chair Macdonald, seconded by Board Member Kotok, that the record for Special Exception A-504(C) be closed.

VOTE: 5-0; Approved

Motion was made by Vice Chair Macdonald, seconded by Alternate Wasserman that Special Exception A-504(C) be granted with one (1) condition and the resolution be approved.

All vehicles to be serviced shall be parked, stored, and loaded/unloaded on site, in accordance with the parking plan.

VOTE: 5-0; Approved

A-500 (1) – Justin Severson for Sprint

The application requests an amendment to Special Exception A-500 to permit replacement of three (3) panel antennas on the existing monopole at 8700 Emory Grove Road 8700 Emory Grove Road, Gaithersburg, Maryland. The property is located in the R-A (Low Density Residential) Zone. The special exception is allowed by § 24-25(11) of the City of Gaithersburg Zoning Ordinance (Chapter 24 of the City Code) in compliance with § 24-167A(D)(2), subject to the review of the Board of Appeals.

Planner Seiden introduced the case, noting that there are currently 9 exhibits in the file and that a public hearing was not required due to the limited nature of the amendment. Mr. James Michal, Esq., Jackson & Campbell, represented the applicant. Mr. Michal provided some historical background on the monopole and Sprint's previous application. Chairperson Kaye swore in Mr. Justin Severson, Project Manager for Network Building and Consulting, a subcontractor to Sprint. Mr. Severson testified that Sprint was currently in the process of swapping antennas for approximately 350 sites in the Washington DC/Baltimore region. He confirmed that there would be no changes to the facility other than the change in the size of the antennas. In response to Board members questions, Mr. Severson stated that capacity, rather than coverage, was the reason for the antenna swap and that no coverage maps were submitted. Mr. Michal introduced two Wall Street Journal articles into the record and they were marked as Exhibits #10 and #11.

Motion was made by Alternate Wasserman, seconded by Vice Chair Macdonald, that the record for Special Exception A-500(1) be closed.

VOTE: 5-0; Approved

Motion was made by Alternate Wasserman, seconded by Board Member Chiswell that Special Exception A-500(1) be granted with ten (10) conditions and the resolution be approved.

1. Prior to the application of a building permit, the petitioner is to provide an executed lease from the Montgomery County Board of Education for ground equipment that requires, at such time as Sprint Communications, Inc., or its successors or assigns, ceases to operate, that its antennas, cabinets, and associated equipment be removed;
2. At such time as Sprint or its successors or assigns, ceases to operate, its antennas, cabinets and associated equipment shall be removed by the applicant at the applicant's expense;
3. At such time as AT&T Mobility, or its successors or assigns, ceases to operate, its antennas, cabinets and associated equipment shall be removed;
4. At such time as Nextel Communications, or its successors or assigns, ceases to operate, its antennas, cabinets and associated equipment shall be removed;
5. At such time as T-Mobile Northeast LLC (a.k.a. Omnipoint Communications CAP Operations LLC/T-Mobile USA), or its successors or assigns, ceases to operate, its antennas, cabinets and associated equipment shall be removed;
6. At such time as Cricket Communications, Inc., or its successors or assigns, ceases to operate, its antennas, cabinets and associated equipment shall be removed by the applicant at the applicant's expense;
7. At such time as Comcast Communications, or its successors or assigns, ceases to operate, all related equipment shall be removed;
8. At such time as Sprint, Inc., T-Mobile Northeast LLC (a.k.a. Omnipoint Communications CAP Operations LLC/T-Mobile USA), Nextel Communications, AT&T Mobility, Cricket Communications, Inc. and Comcast Communications, or their successors or assigns, cease to operate, the monopole and any remaining equipment shall be removed;

9. Installation of antennas and associated equipment must be completed by June 14, 2014;
10. If the installation is not complete by June 14, 2014, the petitioner must request a time extension, in writing, prior to June 14, 2014 and each subsequent year thereafter until such time as the installation is complete.

VOTE: 5-0; Approved

IV. AMENDMENT TO SPECIAL EXCEPTION

A-495 (B) - Gene Taylor for Shadowland Laser Adventures

The application requests an amendment to Special Exception A-495(A) to permit an increase in the number of devices used in the operation of an amusement center from nine (9) to twenty-four (24) at 624 Quince Orchard Road, Gaithersburg, Maryland. The property is located in the C-2 (General Commercial) Zone. The special exception is allowed by Section 24-118(7) of the City of Gaithersburg Zoning Ordinance (Chapter 24 of the City Code) subject to the review of the Board of Appeals.

Planner Eby introduced the case, noting that there are currently 18 exhibits in the file. Chairperson Kaye swore in Mr. Gene Taylor on behalf of Shadowland Laser Adventures, who then gave a brief overview of his request to expand his existing amusement center. In response to a question from Chair Kaye, Mr. Taylor stated that he was not currently an officer of the company. Mr. Taylor then listed, to the best of his knowledge, the officers of the company. Chair Kaye explained that an amusement center could only be granted to an officer of a company, not a corporation. Staff conducted online research and identified the corporation's President, Mr. Randall Briggs, as the proper individual to assign to the special exception.

There was no additional testimony, either in favor of, or in opposition to the amendment to the special exception.

Motion was made by Alternate Wasserman, seconded by Vice Chair Macdonald, that the record for Special Exception A-495(B) be closed.

VOTE: 5-0; Approved

Motion was made by Alternate Wasserman, seconded by Board Member Kotok that Special Exception A-495(B) be granted with five (5) conditions, as amended, and the resolution be approved.

1. The special exception is granted to Randall Briggs, Secretary or Assistant Secretary of Concepts 21 Ltd., doing business as Shadowland Laser Adventures;
2. The applicant is to provide a copy of the signed and executed lease to the Board of Appeals within sixty (60) days of adoption of the Resolution;
3. The applicant is to obtain all required licenses from the City of Gaithersburg for the operation of amusement devices;
4. If the installation of devices is not complete by June 14, 2014, the petitioner must request a time extension, in writing, prior to June 14, 2014 and each subsequent year thereafter until such time as the installation is complete; and
5. The applicant is to provide a copy of the Articles of Incorporation to the Board of Appeals within sixty (60) days of adoption of the Resolution.

VOTE: 5-0; Approved

V. ADJOURNMENT

There being no more business to come before this meeting of the Board of Appeals, the meeting was adjourned at 8:39 p.m.